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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,320	12/30/2003	Fernando Gonzalez	03-5421	8011
39820	7590	07/07/2004		
EDWARD M. LIVINGSTON, PA 963 TRAIL TERRACE DRIVE NAPLES, FL 34103			EXAMINER ARK, DARREN W	
			ART UNIT	PAPER NUMBER

3643

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



Office Action Summary

Application No.

10/748,320

Applicant(s)

GONZALEZ, FERNANDO

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/30/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 5, 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In regard to claims 5 and 6, the specification does not disclose the means for attaching being either glue or tape.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 7, 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Senieur 142,126.

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Senieur discloses a holder (A) capable of holding a fishing rod; a base pole (extending perpendicular from 93 towards 92 in Fig. 9); means for attaching the base pole to holder at a perpendicular angle (tubular coupling of 93).

5. Claims 1-3, 7, 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Herring 5,560,137.

Herring discloses a holder (4, 8, 91) capable of holding a fishing rod; a base pole (extending perpendicular from 93 towards 92 in Fig. 9); means for attaching the base pole to holder at a perpendicular angle (tubular coupling of 93).

6. Claims 1, 4, 7, 9-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Girard 5,058,308.

Girard discloses a holder (15-17) capable of holding a fishing rod; a base pole (19, 20, 23); means for attaching the base pole to holder at a perpendicular angle (see Fig. 3).

7. Claims 1, 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brazilian Pat. No. 2001-1586 to Cauvilla.

Cauvilla discloses a holder (at top extending right and left); a base pole (with sharp point); means for attaching the base pole to holder at a perpendicular angle (see the Figure).

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Handy 6,438,889.

Handy discloses a holder (52) capable of holding a fishing rod; a base pole (12,14); means for attaching the base pole to holder at a perpendicular angle (13, 62, 63, 66).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 3, 5, 6, 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Senieur 142,126 in view of Terrill 4,656,774.

In regard to claims 1 and 9, Senieur discloses a holder (A) capable of holding a fishing rod; a base pole (C); means for attaching the base pole to holder at a perpendicular angle (B), but does not disclose the means for attaching the base pole to the holder at perpendicular angle. Terrill discloses means for attaching (28) the base pole (12) to the holder (generally 18) at a perpendicular angle. It would have been obvious to a person of ordinary skill in the art to modify the device of Senieur such that the means for attaching the base pole to the holder attaches the base pole to the holder at a perpendicular angle in view of Terrill in order to extend the rod from the holder at the desired angle relative to the ground and to support the tip of the rod at an elevation which is not directed upwardly toward the user's torso or face for purposes of safety.

In regard to claims 2, 3, and 8, Senieur discloses the holder and means for attaching made of metal or other material and the base pole made of wood, but does not disclose the holder, base pole or attachment piece being made of PVC pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the holder, base pole and attachment piece out of PVC pipe, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because PVC pipe will not corrode, is lightweight, is readily available, inexpensive, can be cut to the desired size, and can be easily joined together. *In re Leshin*, 125 USPQ 416.

In regard to claims 5 and 6, Senieur discloses the parts secured together by pressure fitting and set screw (S) in slot (F), but does not disclose the use of glue or tape to hold the parts together. It would have been an obvious matter of design choice to utilize glue or tape to hold the parts together, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and it appears that the device of Senieur would perform equally as well and because glue or tape are would also permanently hold together the discrete parts of the device of Herring.

Also in regard to claim 9, Senieur discloses inserting the base pole such that the rod holder is at an angle relative to the horizontal, but does not disclose inserting the second end of the base pole into the ground at an angle so that the pole holder is leaning away from the water. It would have been an obvious matter of design choice to insert the second end of the base pole into the ground at an angle so that the pole

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holder is leaning away from the water in order to incline the rod such that it will not easily be removed from the rod holder by a striking fish due to an increase in the amount of friction between the rod and the rod holder when inclined as such.

11. Claims 2, 3, 5, 6, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herring 5,560,137.

Alternatively in regard to claims 2, 3, and 8, Herring discloses the use of plastic tubing, but does not disclose the holder, base pole or attachment piece being made of PVC pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the holder, base pole and attachment piece out of PVC pipe, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because PVC pipe is readily available, inexpensive, can be cut to the desired size, and can be easily joined together. *In re Leshin*, 125 USPQ 416.

In regard to claims 5 and 6, Herring discloses the parts secured together by pressure fitting or threads, but does not disclose the use of glue or tape to hold the parts together. It would have been an obvious matter of design choice to utilize glue or tape to hold the parts together, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and it appears that the device of Herring would perform equally as well and because glue or tape are would more permanently hold together the discrete parts of the device of Herring.

12. Claims 2, 3, 5, 6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Girard 5,058,308.

In regard to claims 2, 3, and 8, Girard does not disclose the holder, base pole or attachment piece being made of PVC pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the holder, base pole and attachment piece out of PVC pipe, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because PVC pipe is readily available, inexpensive, can be cut to the desired size, and can be easily joined together. *In re Leshin*, 125 USPQ 416.

In regard to claims 5 and 6, Girard discloses the parts secured together, but does not disclose the use of glue or tape to hold the parts together. It would have been an obvious matter of design choice to utilize glue or tape to hold the parts together, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and it appears that the device of Girard would perform equally as well and because glue or tape are common materials for use in securing together discrete parts.

In regard to claim 9, Girard does not disclose inserting the second end of the base pole into the ground at an angle so that the pole holder is leaning away from the water. It would have been an obvious matter of design choice to insert the second end of the base pole into the ground at an angle so that the pole holder is leaning away from the water in order to incline the rod such that it will not easily be removed from the rod holder by a striking fish due to an increase in the amount of friction between the rod and the rod holder when inclined as such.

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13. Claims 2, 3, 5, 6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brazilian Pat. No. 2001-1586 to Cauvilla.

In regard to claims 2, 3, and 8, Cauvilla does not disclose the holder, base pole or attachment piece being made of PVC pipe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the holder, base pole and attachment piece out of PVC pipe, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and because PVC pipe is readily available, inexpensive, can be cut to the desired size, and can be easily joined together. *In re Leshin*, 125 USPQ 416.

In regard to claims 5 and 6, Cauvilla discloses the parts secured together, but does not disclose the use of glue or tape to hold the parts together. It would have been an obvious matter of design choice to utilize glue or tape to hold the parts together, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design, and it appears that the device of Cauvilla would perform equally as well and because glue or tape are common materials for use in securing together discrete parts.

In regard to claim 9, Cauvilla does not disclose inserting the second end of the base pole into the ground at an angle so that the pole holder is leaning away from the water. It would have been an obvious matter of design choice to insert the second end of the base pole into the ground at an angle so that the pole holder is leaning away from the water in order to incline the rod such that it will not easily be removed from the rod

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holder by a striking fish due to an increase in the amount of friction between the rod and the rod holder when inclined as such.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA